

37 Am. Jur. 2d Fraud and Deceit § 29

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Fraud and Deceit

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II. Elements and Requisites

A. Basis of Action

2. Essential Elements of Action

§ 29. Misrepresentation—Negligent misrepresentation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

The elements of a cause of action for negligent misrepresentation are that the defendant made a representation as to a past or existing material fact; the representation was untrue; the defendant, regardless of his or her actual belief, made the representation without any reasonable ground for believing it to be true; the representation was made with the intent to induce the plaintiff to rely on it; the plaintiff was unaware of the falsity of the representation, acted in reliance on the truth of it, and was justified in that reliance; and, as a result of this reliance, the plaintiff sustained damage.¹ The basis for damages resulting from negligent misrepresentation is the lack of care, and the basis for damages resulting from fraud is the want of honesty, thus giving rise to distinct causes of action, one in tort and the other in fraud.² As in a cause of action for fraud, a negligent misrepresentation claim requires proof of an actionable misrepresentation.³ The key difference between fraud and negligent misrepresentation is that fraud requires the conveyance of a known falsity while negligent misrepresentation is predicated upon the transmission of a negligently made false statement.⁴ In contrast to a negligent representation, a fraudulent representation is one that is knowingly untrue, or made without belief in its truth, or recklessly made and for the purpose of inducing action upon it.⁵

Observation:

The tort of innocent misrepresentation, in contrast to the tort of negligent misrepresentation, is predicated on principles of warranty.⁶ An innocent misrepresentation is as much a legal fraud as an intended misrepresentation, and the good faith of a party in making what proves to be a material misrepresentation is immaterial as to the question whether there was an actionable fraud if the other party acted on the misrepresentation to his or her detriment.⁷ The doctrine of innocent misrepresentation, in connection with obtaining a contract, recognizes that if there was in fact a misrepresentation, although made innocently, and its deceptive influence was effective, the consequences to the plaintiff being as serious as though it had proceeded from a vicious purpose, he or she would have a right of action for the damages caused thereby either at law or in equity.⁸

CUMULATIVE SUPPLEMENT

Cases:

Under California law, a negligent misrepresentation claim specifically requires a positive assertion; an alleged omission or a failure to disclose are insufficient. [Jackson v. Fischer](#), 931 F. Supp. 2d 1049 (N.D. Cal. 2013).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Continental Airlines, Inc. v. McDonnell Douglas Corp.](#), 216 Cal. App. 3d 388, 264 Cal. Rptr. 779 (2d Dist. 1989), reh'g denied and opinion modified, (Jan. 5, 1990).
- ² [Holland v. Peoples Bank & Trust Co.](#), 3 So. 3d 94 (Miss. 2008).
- ³ [Flegles, Inc. v. TruServ Corp.](#), 289 S.W.3d 544 (Ky. 2009).
- ⁴ [Armstrong v. Collins](#), 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005).
- ⁵ [Kramer v. Petisi](#), 285 Conn. 674, 940 A.2d 800 (2008).
- ⁶ [Kramer v. Petisi](#), 285 Conn. 674, 940 A.2d 800 (2008).
- ⁷ [Billy Barnes Enterprises, Inc. v. Williams](#), 982 So. 2d 494 (Ala. 2007).
- ⁸ [Titan Ins. Co. v. Hyten](#), 491 Mich. 547, 817 N.W.2d 562 (2012).

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